

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 27 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF WEALTH TAX

Versus

NATWARLAL J JADAWALA

Appearance:

MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 16/12/98

ORAL JUDGEMENT

1. At the instance of Commissioner of Wealth Tax, following question of law has been referred to this Court, for its opinion arising out of its order dated 18.12.1981:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the penalty of Rs.1,35,000/- could not be levied on the assessee under Section 19(1)(c) of the Wealth tax Act, 1957?"

2. The facts of this case are that during the previous year relevant to assessment year 1972-73, assessee was found in possession of a sum Rs.1,35,000/while, he was travelling in a car on 27.10.1971. In his return of income, assessee has shown Rs.1,35,000/- as borrowings, in part III of the return. Assessee's explanation as to source of this borrowing was not found acceptable and the amount was deemed to be income of assessee from undisclosed source under the Income Tax Act for the assessment year 1972-73. Penalty proceedings in respect of concealment of income which was added to the assessee's income as income from undisclosed source were also initiated and penalties were levied. The Tribunal ultimately in the case of assessee under the Income Tax Act had found that disclosure of the transactions in part III of the return was a sufficient disclosure of the particulars of income and the assessee could not be said to be guilty of not disclosing material facts, truly and correctly and had deleted the penalty under the Income Tax Act on the said addition.

3. As Rs.1,35,000/- shown by the assessee in his income tax returns as borrowings, were held to be income from undisclosed sources, said income was also treated part of the wealth owned by the assessee on the valuation date for the assessment year 1972-73 and 1973-74 successively and was added to the net wealth of the assessee, and for each year penalty for non-disclosure of such amount as his wealth was also levied. Since the minimum imposable penalty was to the extent value of asset particulars of which was not disclosed, and maximum was upto two times the said value, the Wealth Tax Officer in each case with the previous approval of Inspecting Assistant Commissioner levied minimum imposable penalty of Rs.1,35,000/- for each years. The Appellate Assistant Commissioner on appeal deleted the penalty following decision of the Tribunal in Income Tax case. On further appeal by the revenue, Tribunal affirmed the order of the Appellate Assistant Commissioner on alternative grounds.

4. As was held by the Tribunal in the income tax proceedings, firstly, it held that the assessee having disclosed the amount of Rs.1,35,000/- in part III in the return of income though he can be visited with the

consequence of fiction created under Section 68 of that Act, and for the unacceptability of his explanation the amount is liable to be included as income from undisclosed sources, it did not necessarily follow that it was the income of the assessee. There being no such fiction available, under the Wealth Tax Act, that such deemed income is to be treated as deemed wealth of the assessee, for the purposes of Wealth Tax assessment, the Wealth Tax Officer could not have fallen back on the analogy of income tax proceedings in the wealth tax proceedings. That apart, the Tribunal further found that apart from the explanation furnished during the course of income tax proceedings, there was no material to show that what amount in question represent the wealth of the assessee on the valuation date. Lastly what weighed with the Tribunal was that asset which was held to be undisclosed was deemed income from undisclosed source carried with it a liability of over Rs.90,000/- on the valuation date under the Income Tax Act. The Wealth Tax is payable on the net wealth as on the valuation date, owned by the assessee and net wealth not only takes into account, the value of asset on the valuation date, but also the existing liabilities as on the valuation date, has to be deducted therefrom. The Tribunal reasoned that as on the valuation date Rs.1,35,000/-, if the same are treated to be income from undisclosed sources, carried with it liability of Rs.90,000/- if that liability is to be taken into account the assessee's net wealth shall be reduced below taxable limit and no tax liability at all arise in the case of assessee, under the Wealth Tax Act. In case no wealth tax liability arises, the question of liability of penalty for non disclosure of any particulars of asset also would not arise.

5. Though on question of law whether disclosure in part III of an income tax return amounts to a full and truthful disclosure for the purpose of penalty proceedings, this court has taken the view in Income Tax Reference No. 140 of 1983 that it does not amount to such disclosure, the fact remains that assessee is liable to pay the wealth tax on net wealth owned or possessed by him on the valuation date and not on any hypothetical sum without taking into account liability attached with it. If value of a house has to be included in the net wealth of the assessee, any encumbrance which it carries with it is also to be deducted from its value. Similarly if a deemed income is to be included in net wealth, only net sum after adjusting liability attached will make its net value as includible in taxable wealth. If the alleged borrowing of the assessment is held to be income of the assessee of the relevant year, it carried with it

liability to pay tax and penalty thereon under the Act, and such liability is relatable to the end of the previous year relevant to the assessment year. That is the valuation date for the purpose of wealth tax. That liability being relatable to that date, in the absence of any prohibition to that effect under statute has to be taken into account in computing the net wealth. As there is no challenge to the fact that if liability arising under the Income Tax Act in relation to the assessment years in question is adjusted against the value of assets, the assessee is not left with taxable wealth at all, in our opinion, Tribunal was justified in coming to the conclusion that no penalty was leviable.

6. We therefore in the aforesaid facts and circumstances of the case, answer the question referred to us in affirmative, i.e., to say in favour of assessee and against revenue.

(Rajesh Balia, J)

(A.R. Dave, J)